

SERVICE DATE - DECEMBER 5, 2001

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34129

RAILAMERICA, INC.–CONTROL EXEMPTION–STATESRAIL ACQUISITION CORP.
AND STATESRAIL, INC.

MOTION FOR PROTECTIVE ORDER

Decided: December 3, 2001

By motion filed November 15, 2001,¹ RailAmerica, Inc. (RailAmerica) seeks a protective order under 49 CFR 1104.14 for the Merger Agreement that RailAmerica and its wholly owned subsidiary StatesRail Acquisition Corp. (Acquisition) have entered into with StatesRail, Inc. (StatesRail) and the stockholders of StatesRail, for StatesRail to merge into Acquisition.² RailAmerica plans to file a verified notice of exemption under 49 CFR 1180.2(d)(2) for RailAmerica's continuance in control of Acquisition and acquisition of control of the Arizona Eastern Railway Company, Eastern Alabama Railway, Kyle Railroad Company, San Joaquin Valley Railroad Company, and SWKR Operating Co., as described in the Merger Agreement. The Merger Agreement is to be filed under seal. RailAmerica states that the Merger Agreement contains highly sensitive information that could harm RailAmerica and its subsidiaries if it became public and contains proprietary commercial information that, if disclosed, could be competitively damaging.

Good cause exists to grant the motion for protective order. The unrestricted disclosure of confidential, proprietary, or commercially sensitive material could cause serious competitive injury. Issuance of the requested protective order will ensure that the confidential information in the Merger Agreement will be used only in connection with this proceeding and not for any other business or commercial purpose. The motion conforms with the Board's rules at 49 CFR 1104.14 governing requests for protective orders to maintain the confidentiality of materials submitted to the Board. Accordingly, the motion for protective order will be granted.

¹ A proposed protective order and undertaking were included with the motion.

² On November 15, 2001, RailAmerica filed motions for protective orders in two related proceedings, RailAmerica, Inc. and West Texas and Lubbock Railroad Company, Inc.–Control Exemption–New StatesRail Holdings Inc. and Alabama & Gulf Coast Railway L.L.C., STB Finance Docket No. 34128, and RailAmerica, Inc. and West Texas and Lubbock Railroad Company, Inc.–Control Exemption–Kiamichi Holdings, Inc. and Kiamichi Railroad L.L.C., STB Finance Docket No. 34130.

It is ordered:

1. RailAmerica's motion for a protective order is granted, and the Protective Order and Undertaking in the Appendix to this decision are adopted.
2. The Merger Agreement, submitted in STB Finance Docket No. 34129, will be kept under seal by the Board and not placed in the public docket or otherwise disclosed to the public, unless the attached Undertaking is executed and the terms of the Protective Order are followed, or unless otherwise ordered by the Board.
3. This decision is effective on its service date.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams
Secretary

APPENDIX

PROTECTIVE ORDER

1. For the purposes of this Protective Order, “confidential information” means the provisions of the Merger Agreement that RailAmerica, Inc. (RailAmerica) and its wholly owned subsidiary StatesRail Acquisition, Corp. (Acquisition), have entered into with StatesRail, Inc. (StatesRail) and the stockholders of StatesRail, for StatesRail to merge into Acquisition, filed in STB Finance Docket No. 34129.

2. The confidential information shall be used for the purpose of this and any related Board proceedings, or any judicial review proceeding arising therefrom, and not for any other business, commercial, or other competitive purpose.

3. The confidential information shall not be disclosed in any way or to any person without the written consent of RailAmerica or an order of the Board, except: to outside counsel or consultants of parties to these proceedings, solely for use in connection with this and any related Board proceedings, or any judicial review proceeding arising therefrom, provided that such outside counsel or consultant has been given and has read a copy of this Protective Order and agrees to be bound by its terms by signing the attached Undertaking prior to receiving access to this information.

4. Any documents containing the confidential information must be destroyed, and notices of such destruction must be served on the Board at the completion of this and any related Board proceedings, or any judicial review proceeding arising therefrom, whichever comes first.

5. If the Board retains the confidential information, it shall, in order to keep it confidential, treat the information in accordance with the procedure set forth at 49 CFR 1104.14.

6. If any party intends to use the confidential information at hearings in this proceeding or in any related Board proceedings, or in any judicial review proceeding arising therefrom, the party shall submit any documents setting forth or revealing such confidential information to the Board, or the reviewing court as appropriate, under seal, and shall accompany such submission with a written request to the Board or the court to (i) restrict attendance at the hearing during discussion of such confidential information, and (ii) restrict access to the portion of the record or briefs reflecting discussion of such confidential information in accordance with this Protective Order.

7. All parties must comply with all of the provisions stated in this Protective Order unless good cause, as determined by the Board, is shown by any party to warrant suspension of any of the provisions herein.

UNDERTAKING

I, _____, have read the Protective Order governing the filing of confidential information by RailAmerica in STB Finance Docket No. 34129, understand the same, and agree to be bound by its terms. I agree not to use or permit the use of any data or information obtained under this Undertaking, or to use or permit the use of any techniques disclosed or information learned as a result of receiving such data or information, for any purpose other than the preparation and preservation of evidence and argument in STB Finance Docket No. 34129 or any judicial review proceedings taken or filed in connection therewith. I further agree not to disclose any data or information obtained under this Protective Order to any person who is not outside counsel or a consultant, who is not also bound by the terms of this order, and who has not executed an Undertaking in the form hereof.

I understand and agree that money damages would not be a sufficient remedy for breach of this Undertaking and that RailAmerica shall be entitled to specific performance and injunctive or other equitable relief as a remedy for any such breach, and I further agree to waive any requirement for the securing or posting of any bond in connection with such remedy. Such remedy shall not be deemed to be the exclusive remedy for breach of this Undertaking but shall be in addition to all remedies available at law or equity.

Dated: _____

Signature

Position

Affiliation